

***United States Court of Appeals
for the Second Circuit***



APPENDIX

77-1132

In The
United States Court of Appeals
For The Second Circuit

UNITED STATES OF AMERICA,

Appellee.

vs.

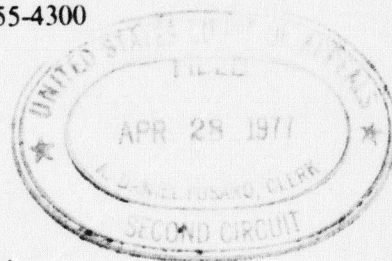
ARTHUR BERARDELLI,

Appellant.

*On Appeal from the United States District Court for the Eastern
District of New York.*

APPELLANT'S APPENDIX

SEGAL & HUNDLEY
Attorneys for Appellant
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TABLE OF CONTENTS

	Page
Docket Entry	1a
Judgment (Filed March 7, 1977)	2a
Order (Dated November 10, 1976)	3a
Order to Show Cause (Dated November 17, 1976)	5a
Affidavit of Jacob Laufer in Support of Motion (Dated November 15, 1976)	6a
Exhibits Annexed to Foregoing Affidavit:	
A — Subpoena	8a
B — Order	9a
Memorandum (Filed March 4, 1977)	10a
Excerpts of Transcript of Proceedings	13a
Request to Charge	87a

T-18:401

OFFENSES CHARGED

criminal contempt

CLOSED

UNITED STATES COURT OF APPEALS

FILED

MAR 29 1977

APPEALS DIVISION

ARREST or		DETENTION		ARRAIGNMENT		TRIAL	
U.S. County Dept.	Mag. Res. Rec.	Arrested	☒	Admitted	☐	Not Guilty	☐
Summary Court	Super. Court	Detention	☐	Not Guilty	☐	Not Guilty	☐
Final Appellate	In Charge	Detention	☐	Not Guilty	☐	Not Guilty	☐

MAGISTRATE		APPEARANCE		NOTICE	
Not Guilty	Guilty	Not Guilty	Guilty	Not Guilty	Guilty
Not Guilty	Guilty	Not Guilty	Guilty	Not Guilty	Guilty
Not Guilty	Guilty	Not Guilty	Guilty	Not Guilty	Guilty
Not Guilty	Guilty	Not Guilty	Guilty	Not Guilty	Guilty

12/29/76 By BARTELS, J. - Order filed. - Ordered that the Clerk of the Court shall sever the criminal contempt action of this debt from the case in which it arose, 75 CR 521 and ascribe to said criminal contempt action a separate docket number under which all pertinent papers are to be filed.

12/30/76 Order directing that a deposition be taken of the testimony of the debt pursuant to T-18:3503 (filed 5/18/76). Order filed 11/10/76 to allow no testimony or other information directly or indirectly derived from such testimony may be used against debt, except a prosecution for perjury, giving a false statement, etc., with letter and affidavit annexed dated 11/17/76 to David Trager from Mr. Thornburgh - Asst. Atty. Criminal Division approving the order. Order to show cause filed 11/17/76. Order should not be held in contempt pursuant to T-18:401. Order of law re: Criminal Contempt filed 11/24/76, Order of law re: Criminal Contempt filed 11/29/76, Order of law re: Criminal Contempt filed 11/30/76, Notice of motion to sever the criminal contempt action filed 12/3/76, letter to Mr. Spurlin from Mr. Trager, Asst. Atty - U.S. Dept. of Justice, re: sentencing of debt, Memo in mitigation of punishment for conviction of debt.

DATE

IV. PROCEEDINGS (Continued)

PAGE TWO

V. INELIGIBLE (Continued)

criminal contempt filed 12/2/76. EARL THREE DOCUMENTS HAVE BEEN REMOVED FROM THE CASE 75 CR 521 AND PLACED WITH THIS FILE.

12/30/76 On 11/29/76 - Before BARTLE, J. - Case called. Deft & Counsel present. Deft's motion for continuance for disqualification of the court is denied. Trial ordered and begun on criminal contempt. Jurors selected and sworn. Govt opens, govt rests. Trial continued to 11/30/76 at 10:00 a.m.

On 11/30/76 - Before BARTLE, J. - Case called. Deft & Counsel present. Trial resumed. Deft rests. Govt sums up. Alternate jurors discharged. Jury retires to deliberate and returns with a verdict of guilty. Jury discharged. Deft's motion to set aside verdict - motion denied. Deft: released on his own recognizance.

1-21-77 Copy of transcript filed dated July 16, 1974 before Hon. Thomas P. Grider, Southern District of NY and 2 letters filed received from Chambers etc.

2-9-77 Before BARTLE, J - case called - deft & counsel Robert Sgarlotta present - sentencing hearing ordered and begun. Hearing concluded - adjd to 3-4-77 for sentence.

3-4-77 Before Bartels, J - case called - deft & counsel Robert Sgarlotta present. Deft sentenced for a period of 3 yrs. Execution of sentence stayed pending appeal.

3-4-77 Judgment and commitment filed - certified copies to Marshal

3/4/77 Notice of Appeal filed.

3/4/77 Pocket entries and duplicate notices of Appeal mailed to the C of A.

3/4/77 Affidavit of Michael C. Berhardt filed and forwarded to Chambers.

3/4/77 Affidavit of Jacob Laufer filed and forwarded to Chambers.

3.4.77 Memorandum in Mitigation of Punishment for conviction of Criminal contempt filed and forwarded to Chambers.

3/4-77 Memorandum filed received from Chambers re deft from James Haren, Chief, Probation Officer.

3.14.77 Order filed received from the Court of Appeals that the appeal be docketed and the record filed on or before 3.28.77.

3/25/77 Stenographers transcript dated 2/9/77 filed.

3/24-77 3 transcripts filed (one dated Nov. 29, 1976; one dated Nov. 30, 1976 and one dated Mar. 4, 1977)

DATE	RECEIPT NUMBER	BY	FOR

BEST COPY AVAILABLE

2a

JUDGMENT
 (Filed March 7, 1977)

United States of America vs. **ARTHUR BERARDELLI**

United States District Court
EASTERN DISTRICT OF NEW YORK

DOCKET NO. **3**

JUDGMENT AND PROBATION/COMMITMENT ORDER

In the presence of the attorney for the government the defendant appeared in person on this date MONTH **3** DAY **4** YEAR **1977**

COUNSEL ☐ WITHOUT COUNSEL However the court advised defendant of right to counsel and asked whether defendant desired to have counsel appointed by the court and the defendant thereupon waived assistance of counsel.

☒ WITH COUNSEL **Robert Sgarlotta, Esq.**
(Name of counsel)

PLEA ☐ GUILTY, and the court being satisfied that there is a factual basis for the plea, ☐ NOLO CONTENDERE, ☐ NOT GUILTY

There being a finding/verdict of ☐ NOT GUILTY. Defendant is discharged

☒ GUILTY.

FINDING & JUDGMENT Defendant has been convicted as charged of the offense(s) of **violating Title 18, U.S.C. Section 401 for refusing to give testimony pursuant to an order of immunity, signed by this Court on November 10, 1976, during the trial of United States vs Paul Castellano, et al, in the Eastern District of New York**

The court asked whether defendant had anything to say why judgment should not be pronounced. Because no sufficient cause to the contrary was shown, or appeared to the court, the court adjudged the defendant guilty as charged and convicted and ordered that: The defendant is hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of

SENTENCE OR PROBATION ORDER **5 years. Execution of sentence stayed pending appeal.**

SPECIAL CONDITIONS OF PROBATION

ADDITIONAL CONDITIONS OF PROBATION

COMMITMENT RECOMMENDATION

The court orders commitment to the custody of the Attorney General and recommends,

SIGNED BY *John R. Bartels*
 U.S. District Judge

Date **March 4, 1977**

FILED
 IN CLERK'S OFFICE
 U.S. DISTRICT COURT E.D. N.Y.
 ★ MAR 7 1977 ★
 TIME A.M. _____ P.M. _____

This document is a certified copy of the original and is subject to the same provisions of law as the original.

ORDER

(Dated November 10, 1976) (pp. 3a-4a)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - -x

UNITED STATES OF AMERICA

-v-

PAUL CASTELLANO, ET AL.

Defendants

- - - - -x

On the 10th day of November, 1976, this matter came before the Court upon the application of the United States of America, by and through Jacob Laufer, Special Attorney, Department of Justice, for an order finding Arthur Berardelli in direct contempt of court for his refusal to answer questions before the Court on that date. Arthur Berardelli was present in person.

Being advised in the premises, the Court finds that Arthur Berardelli appeared before the Court on November 10, 1976; and that Arthur Berardelli refused to answer questions propounded by said Jacob Laufer and the Court, after having been granted immunity for prosecution under Title 18, United States Code, Section 6003, and ordered to answer questions before the said Court pursuant to the order of Honorable John R. Bartels,

United States District Judge, Eastern District of New York, of November 10, 1976 (upon the application of David G. Trager, United States Attorney, Eastern District of New York); that Arthur Berardelli is in direct contempt of the order of this Court and should be committed to the custody of the United States Marshal.

IT IS ORDERED, ADJUDGED AND DECREED that Arthur Berardelli is in direct contempt of this Court for his failure to answer questions before the Court and he is hereby committed to the custody of the Attorney General of the United States for the life of the trial of this case, or for six (6) months, or until such time as he purges himself of this contempt, whichever event occurs first; the place of the witness Arthur Berardelli's confinement shall be the Metropolitan Correctional Center, New York, New York.

IT IS SO ORDERED.

JOHN R. BARTELS
UNITED STATES DISTRICT JUDGE
EASTERN DISTRICT OF NEW YORK

Dated: Brooklyn, New York
November 10, 1976

ORDER TO SHOW CAUSE
UNITED STATES DISTRICT COURT (Dated November 17, 1976)
EASTERN DISTRICT OF NEW YORK

5a

----- x
UNITED STATES OF AMERICA :

- v - :

ARTHUR BERARDELLI, :

Defendant. :

ORDER TO SHOW CAUSE

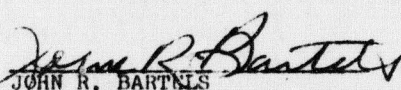
75 CR 521

----- x
On the annexed application of David G. Trager, United States Attorney, Eastern District of New York and the affidavit of Jacob Laufer, Special Attorney, United States Department of Justice,

IT IS HEREBY ORDERED that ARTHUR BERARDELLI appear before the Honorable John R. Bartels, United States District Judge, Eastern District of New York, United States Courthouse, Brooklyn, New York, on the 29 day of November, 1976 at 9:30 o'clock in the fore noon and show cause why he should not be held in contempt pursuant to Title 18, United States Code, Section 401, for refusing to give testimony pursuant to an order of immunity, signed by this Court on November 10, 1976, during the trial of United States v. Paul Castellano et al. (Indictment No. 75 Cr. 521) in the Eastern District of New York, and why this Court should not grant the United States of America such other and further relief as may be proper.

Service of a copy of this Order and all the papers upon which it is based on the said ARTHUR BERARDELLI on or before 5:00 in the afternoon on the 18 th day of November, 1976, shall be deemed sufficient.

Dated: Brooklyn, New York
November 17, 1976


JOHN R. BARTELS
United States District Judge

6a

AFFIDAVIT OF JACOB LAUFER IN SUPPORT OF MOTION
UNITED STATES DISTRICT COURT (Dated November 15, 1976) (pp. 6a-7a)
EASTERN DISTRICT OF NEW YORK

----- x
UNITED STATES OF AMERICA :
- v - : AFFIDAVIT
ARTHUR BERARDELLI, :
Defendant. :
----- x

Jacob Laufer, being duly sworn, deposes and says:

1. I am a Special Attorney with the United States Department of Justice. I make this affidavit in support of the attached Order to Show Cause why ARTHUR BERARDELLI should not be held in criminal contempt pursuant to the provisions of Title 18, United States Code, Section 401.

2. In my capacity as a Special Attorney for the United States Department of Justice, I caused to be issued a subpoena requiring ARTHUR BERARDELLI to give testimony at the trial of United States v. Paul Castellano, et al. (Indictment No. 75 Cr. 521) in the Eastern District of New York. Pursuant to this subpoena, a copy of which is attached hereto as Ex. A, ARTHUR BERARDELLI appeared before the Honorable John R. Bartels, United States District Judge, Eastern District of New York on November 10, 1976.

3. After advising the Court of his intention to refuse to testify based upon his privilege against self-incrimination, ARTHUR BERARDELLI was advised that an immunity order had been signed by the Honorable John R. Bartels, United States District Judge, Eastern District of New York and that he was required to give testimony pursuant to that order under the penalty of contempt. A copy of that order is attached hereto as Ex. B.

4. ARTHUR BERARDELLI thereafter refused to answer specific questions posed to him by your affiant and defied the direction of the Court to answer said questions.

5. The Government files this affidavit and attached application of David G. Trager, United States Attorney, Eastern District of New York pursuant to the provisions of Rule 42(b), Federal Rules of Criminal Procedure.

6. No previous affidavit application for an order to show cause in this matter has been made.

Jacob Laufer
JACOB LAUFER
Special Attorney
United States Department of Justice

Sworn and subscribed to before
me this 5th day of November, 1976.

Marion I. Rabe
Notary Public
State of New York
County of Queens - Qualified ex. in County
41-4617417

Expires 3-30-77

EXHIBITS ANNEXED TO FOREGOING AFFIDAVIT:

United States District Court

FOR THE
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.
PAUL CASTELLANO, et al.

No. 75-CR-521

To ARTHUR BERARDELLI

You are hereby commanded to appear in the United States District Court for the Eastern District of New York at 225 Cadman Plaza East in the city of Brooklyn, N.Y., on the 8th day of March 1976 at 10:00 o'clock A.M. to testify in the above-entitled case.

This subpoena is issued on application of the United States

February 5, 1976

Jacob Laufer *Jacob Laufer*
Attorney for United States
1 St. Andrews Plaza, N.Y., N.Y.
Address

By

Clerk.

Deputy Clerk.

RETURN

Received this subpoena at *New York, NY*
and on *2/17/76*
within named *Arthur Berardelli*
by delivering a copy to *him* and tendering to
allowed by law.

on

2/16/76

I served it on the

the fee for one day's attendance and the mileage

Service Fees

Travel \$
Services \$
Total \$

By

James K. Kallahan
SA FBI NY NY
2/17/76

* Insert "United States" or "defendant" as the case may be.

* Fees and mileage need not be tendered to the witness upon service of a subpoena issued in behalf of the United States or an officer or agency thereof, 28 USC 1825, or on behalf of a defendant who is financially unable to pay such costs (Rule 17(b), Federal Rules Criminal Procedure).

EXHIBIT B - ORDER

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

- - - - - x

UNITED STATES OF AMERICA :

- v - :

APPLICATION

ARTHUR BERARDELLI, :

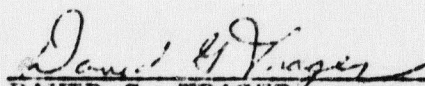
Defendant. :

- - - - - x

David G. Trager, United States Attorney for the Eastern District of New York, hereby makes application for an order pursuant to the provisions of Rule 42(b), Federal Rules of Criminal Procedure, requiring that ARTHUR BERARDELLI be compelled to appear at a hearing at which he will be prosecuted for criminal contempt pursuant to Section 401, Title 18, United States Code, and alleges as follows:

1. The said ARTHURBERARDELLI has been called to testify at the trial of United States v. Paul Castellano, et al (Indictment No. 75 Cr. 521).

2. The said witness has refused to testify on the basis of his privilege against self incrimination and has refused to comply with the order of the Court requiring that he provide such testimony pursuant to the immunity provisions of Title 18, United States Code, Sections 6001-03.



DAVID G. TRAGER
United States Attorney for the
Eastern District of New York

SECRET

3576

10a

MEMORANDUM

(Filed March 4, 1977) (pp. 10a-12a)

Memorandum re: Relationship Between Arthur Berardelli and
The Federal Government

Arthur Berardelli's cooperation with the Federal Government began on approximately July 24, 1973, one day before a jury convicted him in Indictment No. 73 Cr. 79 in the Southern District of New York. As of that date, Mr. Berardelli had three other federal indictments pending: 73 Cr. 471, 73 Cr. 929, and 73 Cr. 747. It was agreed that if Mr. Berardelli cooperated fully the following would occur with respect to those three indictments:

1. Arthur Berardelli would have to plead guilty to felony crimes as charged in Indictment Nos. 73 Cr. 471 and 73 Cr. 747.
 2. Indictment No. 73 Cr. 929 would be dismissed as to Arthur Berardelli.
 3. The Government would make known to the sentencing Court in Indictment Nos. 73 Cr. 471 (Judge Carter), 73 Cr. 747 (Judge Gurfein) and 73 Cr. 79 (Judge Motley) the extent and degree of Mr. Berardelli's cooperative relationship with the federal Government.
- Mr. Berardelli did in fact plead guilty to Indictment Nos. 73 Cr. 471 and 747 and received probationary sentences. The Government made no recommendations as to these sentences. The Court was apprised in each case however of Mr. Berardelli's cooperation.

The Government also provided the Board of Parole with all the details surrounding the facts and circumstances of his cooperation so that the Board of Parole could consider such cooperation as a factor in its determination of Arthur Berardelli's eligibility for parole. No recommendation made to Board of Parole.

It was also understood that Mr. Berardelli would not be prosecuted for his involvement in the loansharking activities of Paul Castellano and his associates if it were determined that he had been fully cooperative with the Government. Mr. Berardelli was advised on many occasions that if he decided not to honor original commitment to testify in this matter he could expect to be prosecuted for his own involvement. The only monies received by Arthur Berardelli were subsistence monies for approximately two months prior to his ultimate rejection of relocation. Mr. Berardelli received \$700 in subsistence as well as housing for two months as part of this brief relocation. \$1000 was paid to Mr. Berardelli by the Federal Bureau of Investigation for expenses incurred by Mr. Berardelli in an investigation in which he was cooperating. This was not reward money.

Indictment No. 73 Cr. 929 was dismissed as to Arthur Berardelli by the Government.

In Indictment No. 73 Cr. 79, the Court became fully aware of Arthur Berardelli's cooperation when the Government joined in Arthur Berardelli's motion to reduce the two year term of imprisonment that the Court had imposed as a result of his conviction. That motion was denied however, and the two year sentence remained effective.

Arthur Berardelli was told from the outset of his cooperation that he would be relocated if he and his family desired in view of the danger to their lives and safety that might result because of his cooperation. Which such relocation was formally offered to Arthur Berardelli by the Government and initially accepted, it was eventually rejected by him. Arthur Berardelli was however provided with certain security measures while he was incarcerated for eight months as part of the two year sentence imposed in Indictment No.

73 Cr. 79.

EXCERPTS OF TRANSCRIPT OF PROCEEDINGS

354

1 Mr. Berardelli's * * * (pp. 13a-86a)
2 used against him.

3 MR. SGARLATO: What about the testimony he gave
4 in the Grand Jury.

5 THE COURT: That's the same thing.

6 MR. LAUPER: Well, your Honor, if -

7 THE COURT: On this case.

8 MR. LAUPER: Yes. Well, the testimony that he
9 gave in the Grand Jury --

10 THE COURT: Was only on this case.

11 MR. LAUPER: Was only on this case. That
12 testimony can however, be used against him, the
13 prior testimony. The whole point of the use immunity
14 statute is that as Mr. Berardelli will sit on that
15 witness stand, any statements that may be taken from
16 him should not be used against him if he claims his
17 privilege.

18 THE COURT: He didn't get use immunity in the
19 Grand Jury.

20 MR. SGARLATO: He didn't get any immunity.

21 (Continued next page.)
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JB/tk¹2am4 ²

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MR. LAUFER: No. He got an informal --

MR. SGARLATO: Your Honor, I --

MR. LAUFER: If your Honor wishes, I have a memorandum.

THE COURT: What kind of informal --

MR. LAUFER: He got immunity that if he cooperated with the Government he would not be prosecuted on the basis of anything that he said before the grand jury.

THE COURT: The grand jury.

MR. LAUFER: Yes, your Honor.

THE COURT: Well --

MR. LAUFER: Which he --

THE COURT: That is informal --

MR. LAUFER: That's the full equivalent of immunity.

THE COURT: That's in writing.

MR. LAUFER: It is not. Well, it was not in writing. But the Government has reduced it to writing at this point, in a document that was handed to defense Counsel.

MR. SGARLATO: I didn't see that.

THE COURT: If you have that -- Where is it?

MR. LAUFER: I have it.

THE COURT: If you have that, I don't know what

* * *

(The following transpired in open court.)

MR. LAUFER: The Government calls Arthur Berardelli.

THE COURT: Do you want him to testify before the jury?

MR. LAUFER: I would ask that he be sworn at this time.

MR. LA ROSSA: Can counsel for the defense know what is going on?

THE COURT: You will find out. He is going to swear him in and ask him some questions. He is going to try to give him the immunity, and he is going to claim the fifth amendment. You say you do not know what is going on?

MR. LA ROSSA: Outside the presence of the jury?

THE COURT: Yes.

MR. LA ROSSA: I just wanted to know what was going on.

THE COURT: You probably knew it before I did.

ARTHUR BERARDELLI, having been first duly sworn by the Clerk of the Court, testified as follows:

EXAMINATION

BY MR. LAUFER:

Q Are you familiar with any individual known as

1 Paul Castellano?

2 A Mr. Laufer, I refuse to answer any questions at
3 this time or any questions pertaining to this matter based
4 upon my fifth and fourteenth amendment rights.
5

6 MR. LAUFER: Your Honor, I have previously handed up through the
7 Clerk to the Court an application, an affidavit requesting
8 the Court to confer immunity under Title 18 of United States
9 Code, Section 6003, upon this witness.

10 THE COURT: Pursuant to Section 6003 of Title 18,
11 the Court, pursuant to the request of the Assistant
12 United States Attorney, will give you use immunity.
13 You will be privileged against prosecution with respect
14 to any and all matters to which you may be interrogated
15 before the United States District Court of this
16 district, and I will read that statute to you word for
17 you so that you will understand it.

18 MR. LA ROSSA: Do you want 6003, your Honor?

19 THE COURT: (Document handed to Court.)

20 Mr. Berardelli, this Court will give you immunity
21 from any prosecution with respect to any testimony or
22 other information you may give in this Court in this
23 case, so that none of that testimony may be used against
24 you in a criminal case except a prosecution for
25 perjury in giving a false statement or otherwise not

1
2 complying with this immunity which the Court is about
3 to give you, so pursuant to an order of this Court, you
4 are given immunity.

5 Pursuant to Section 6003 of Title 18 and 28
6 (CFR-0.175), you are privileged against self-incrimina-
7 tion as to all matters which you may be interrogated
8 about before the United States District Court of the
9 Eastern District of New York in this case, and it is
10 further ordered that no testimony or other information
11 compelled under this order, which I am about to sign,
12 or any information directly or indirectly derived from
13 the testimony or other information may ever be used
14 against you, except the prosecution for perjury, the
15 giving of a false statement or otherwise failing to
16 comply with this order.

17 I will read the whole order so you have no doubt
18 as to what it says.

19 It says here:

20 That Arthur Berardelli has been called to
21 testify before the United States District Court for the
22 Eastern District of New York in the matter of United
23 States v. Paul Castellano, et al; and

24 Two, that Arthur Berardelli has refused to
25 testify on the basis of his privilege against self-

1 incrimination.

2 That is true, is it not?

3 THE WITNESS: Yes.

4 THE COURT: That ^{in the} judgment of the said United
5 States attorney, the testimony from said Arthur
6 Berardelli may be necessary to the public interest,
7 and
8

9 Four, the aforesaid application filed herein
10 has been made with the approval of the Assistant
11 Attorney General in charge of the Criminal Division of
12 the Department of Justice, pursuant to the authority
13 vested in him by Title 18, United States Code, Section
14 6003 and 28 CFR 0.175, and I have an affidavit here
15 signed by Jacob Laufer.

16 MR. LAUFER: That is the affidavit.

17 THE COURT: That is what I said.

18 That is what I am talking about.

19 MR. LAUFER: There is a further application in
20 letter form --

21 THE COURT: Yes, from Richard L. Thornburgh --

22 MR. LAUFER: That is the authorization from
23 the Assistant Attorney General. There is a letter from
24 David Trager.

25 THE COURT: From David Trager?

1
2 MR. LAUFER: Yes, your Honor.

3 THE COURT: Let me finish.

4 It says:

5 "The aforesaid application filed herein has been
6 made with the approval of the Assistant Attorney General
7 in charge of the Criminal Division of the Department of
8 Justice, pursuant to the authority vested in him by
9 Title 18, United States Code, Section 6003 and
10 28 CFR 0.175.

11 "Now, therefore, it is ordered pursuant to
12 Title 18, United States Code, Section 6002, that the
13 said Arthur Berardelli give testimony which he refuses
14 to give on the basis of his privilege against self-
15 incrimination as to all matters about which he may be
16 interrogated before the said United States District
17 Court for the Eastern District of New York in the matter
18 of United States v. Paul Castellano, et al; and it is
19 further ordered that no testimony or other information
20 compelled hereunder, or any information directly or
21 indirectly derived from such testimony, or other
22 information, may be used against the said
23 Arthur Berardelli in any case, except a prosecution
24 for perjury, giving a false statement or otherwise
25 failing to comply with this order.

1 "This order shall become effective only if
2 after the date of this order the said
3 Arthur Berardelli refused to testify or provide other
4 information on the basis of his privilege against self-
5 incrimination."

6 Ask him again.

7 MR. LAUFER: I ask you again, are you familiar
8 with any individual whose name is Paul Castellano?
9

10 THE WITNESS: Mr. Laufer, I refuse to answer at
11 this time.

12 MR. LAUFER: Mr. Berardelli, is it your position
13 that you will continue to refuse to answer any questions
14 that I will propound to you today?

15 THE WITNESS: Yes, Mr. Laufer.

16 THE COURT: I order you to answer further
17 questions in connection with this case of United States
18 v. Paul Castellano, et al. Do you still refuse to
19 answer the questions?

20 THE WITNESS: Yes, your Honor.

21 THE COURT: I hereby punish you for contempt to
22 take effect immediately.

23 MR. LAUFER: I have a proposed order for your
24 Honor's consideration.

25 MR. SGARLATO: May I be heard?

1
2 THE COURT: Yes.

3 MR. SGARLATO: Mr. Berardelli has a business, he
4 has a father who is ill, and he has to go home and
5 break the news to him. May he submit himself tomorrow
6 morning?

7 MR. LAUFER: The Government vehemently objects.
8 Mr. Berardelli has just committed a flagrant contempt
9 of this Court, and it is submitted that he ought to
10 stay committed until he perjures himself.

11 THE COURT: I believe that is true.

12 MR. SGARLATO: He is willing to take the punish-
13 ment --

14 THE COURT: He can give someone else the keys.
15 Take him down.

16 MR. LAUFER: We have a column in this regard.
17 I'm afraid in light of this circumstance, we will have
18 to ask your Honor until tomorrow morning to continue
19 with our next witness.

20 THE COURT: What do you think the jury will
21 think?

22 MR. LAUFER: I apologize. We did not know that
23 Mr. Berardelli would take this route. The next witness
24 will be ready at ten o'clock morning, or whichever time
25 your Honor wishes to reconvene this Court. We do

1
2 apologize. The request for a continuance until
3 tomorrow is made necessary by these events.

4 THE COURT: I do not know what I am going to say
5 to the jury, but bring them in.

6 (Jury present.)

7 THE COURT: Ladies and gentlemen, I am somewhat
8 embarrassed to tell you because of a most unusual event
9 that occurred during this adjournment from 12:20 until
10 two o'clock, it makes it necessary for us to stop the
11 trial temporarily until tomorrow morning. I know that
12 you have been very patient and you had a number of
13 delays, and I certainly regret this delay, but there is
14 no avoidance of the delay, and I am compelled to adjourn
15 this case until tomorrow morning at ten o'clock. I hope
16 I do not have to do that again. I hope we can act more
17 speedily. I might ask you again not to discuss the case
18 among yourselves and certainly you must be careful not
19 to read any papers which contain any reference to this
20 case. It is terribly important to keep your minds
21 open and not be influenced by any newspapers or any
22 other outside influence. I do not think this will ever
23 happen again, but I am sorry, but we have to adjourn
24 right now.

25 Thank you.

1 (Jury leaves courtroom.)
2

3 THE COURT: Where is the order?

4 MR. LAUFER: This is the order.

5 THE COURT: Are you gentlemen all satisfied with
6 the tape recordings or do you have some problems?

7 MR. LAUFER: This is the order holding the
8 witness in civil contempt. It is the proposed order
9 submitted by the Government.

10 THE COURT: You want to give the defendant and
11 his counsel a copy. I do not think his lawyer has a
12 copy.

13 MR. LAUFER: I have one further request of your
14 Honor --

15 THE COURT: Where is the attorney?

16 THE CLERK: I believe he has left the courtroom.

17 THE COURT: Give him a copy.

18 MR. LAUFER: I regret, I must once again ask your
19 Honor to direct the return to the Government of the 3500
20 material as to Arthur Berardelli, which was furnished to
21 defense counsel.

22 THE COURT: Why don't you give him back the
23 3500 material?

24 MR. LAUFER: Your Honor, if he calls him back
25 two days from now, we will go through this all over

* * *

1
2 THE COURT: I do not think you made it clear to
3 Mr. Sgarlota.

4 MR. LAUFER: I made it clear to him.

5 THE COURT: It can be up to six months.

6 MR. LAUFER: He could be incarcerated for civil
7 contempt up to six months, and the Government was
8 contemplating at this time an indictment for perjury
9 and an indictment for obstruction of justice, and the
10 possibility of an indictment for the charges to which
11 these defendants are before the Court today.

12 THE COURT: I think I might have mislead you,
13 and didn't bring to your attention that under the
14 present circumstances --

15 MR. SGARLATO: Mr. Laufer showed me --

16 THE COURT: Knock that out. I am talking about
17 the agreement Mr. Laufer made with Mr. Berardelli with
18 respect to his grand jury testimony. That is all off
19 now.

20 MR. LAUFER: That was made clear.

21 MR. SGARLATO: I understand that. I understand
22 that agreement states for his cooperation. It does
23 not state specifically how long. He may contend it is
24 off. I contend that it is still in force.

25 THE COURT: You can contend whatever you want.

Berardelli

I then ordered you to testify and you again refused.

THE WITNESS: Yes, sir.

THE COURT: I thereupon incarcerated you for contempt of this Court in the presence of the Court.

Now, you were brought back here a second time for an opportunity to testify if you wished to change your mind because the Court believes it is necessary to inform you, or at least it is advisable to inform you that in addition to being able to punish you for civil contempt, you may be punished for criminal contempt if you continue your refusal to testify in this case under the circumstances.

Now, do you understand that the Court, when an action is brought, when an order to show cause is brought, and a show cause already has been brought, that the Court will be able to punish you for criminal contempt for your refusal to testify.

Do you understand that?

THE WITNESS: Yes, sir.

THE COURT: All right.

MR. LAUPER: Your Honor, may we proceed with some questioning.

THE COURT: Yes.

* * *

1
2 Q Are you familiar --

3 THE COURT: I order you to answer those
4 questions.

5 How go ahead.

6 Do you still refuse?

7 THE WITNESS: Yes, your Honor.

8 THE COURT: All right.

9 BY MR. LAUFER:

10 Q Are you familiar with Joseph Castellano?

11 A I refuse to answer, Mr. Laufer.

12 THE COURT: On what grounds, by the way?

13 On what grounds?

14 THE WITNESS: My violation of my Fifth
15 Amendment rights.

16 THE COURT: No, you have been given use immunity,
17 the Government has said it will not prosecute you for
18 any statements that you make in this case which may
19 incriminate you, and that is the right you have under
20 the Fifth Amendment.

21 You understand that, don't you?

22 THE WITNESS: Yes, sir.

23 THE COURT: You still understand that you cannot
24 be prosecuted for any statements you make in this
25 case?

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THE WITNESS: Yes.

3

THE COURT: Now you still say you refuse?

4

THE WITNESS: Yes, sir.

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THE COURT: Not on Fifth Amendment grounds, on what grounds?

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MR. SGARLATO: Your Honor, as Mr. Berardelli's attorney, I would say that the questions being propounded to him, which are being asked him, would be the basis of a hearing, a criminal hearing.

12

13

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15

THE COURT: No, not at this point.

MR. LAUFER: Your Honor, I believe that in order to effectuate the provisions of Section 401, it will be necessary for your Honor to schedule a hearing at a reasonable time.

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THE COURT: But it will not be a jury case.

MR. LAUFER: Not a jury case, no, your Honor.

THE COURT: There has to be a separate order to show cause.

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MR. SGARLATO: Yes, your Honor, and Mr. Berardelli gave us his reasons last Wednesday.

THE COURT: His reasons were Fifth Amendment and I asked does he understand that he cannot be prosecuted because he has use immunity.

All right.

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2 MR. SGARLATO: Your Honor, we told you,
3 Mr. Berardelli and myself were at the side and
4 informed your Honor of the reasons that Mr. Berardelli
5 didn't wish to testify.

6 THE COURT: Those reasons have no basis
7 whatsoever, the reasons were you were afraid that the
8 Government may prosecute him or what, I mean, you
9 know, they are absolutely invalid and frivolous reasons,
10 and you know that as well as I do.

11 MR. SGARLATO: Your Honor, Mr. Berardelli has
12 given his reasons.

13 THE COURT: All right.

14 He felt that the Government may prosecute him
15 or place him under duress, and those were the reasons
16 you gave.

17 MR. SGARLATO: There were further reasons,
18 your Honor.

19 THE COURT: Well?

20 MR. SGARLATO: There is testimony which
21 Mr. Berardelli will refute and under those
22 circumstances the United States Attorney would
23 prosecute him for perjury.

24 THE COURT: You mean that he will recant some
25 of the statements he made in the Grand Jury?

Berardelli-direct

757

1
2 MR. SGARLATO: Yes, your Honor.

3 THE COURT: And under the circumstances --

4 MR. SGARLATO: (Continuing) The United States
5 Attorney would prosecute him for perjury.

6 THE COURT: There is nothing wrong with that, is
7 there?

8 MR. LAUFER: Your Honor, I believe --

9 MR. SGARLATO: Mr. Berardelli would have to put
10 himself in such a position where he would be
11 testifying and he could be cited for perjury.

12 THE COURT: He has to tell the truth.

13 MR. SGARLATO: Where he is going to be
14 prosecuted for perjury?

15 THE COURT: That is when they recant.

16 Now you can't do that, you can't make a
17 statement under oath and then --

18 MR. SGARLATO: Then there would be no immunity
19 involved because he is going to be given -

20 MR. LAUFER: Your Honor, I think Mr. Sgarlato's
21 statements are more appropriate for a hearing should
22 your Honor call a hearing.

23 THE COURT: I want to give him a last clear
24 chance, at the hearing it is too late.

25 MR. LAUFER: I am afraid it will be.

Berardelli-direct

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2 THE COURT: At the hearing it is frozen.

3 You understand that, Mr. Berardelli, you
4 understand that?

5 THE WITNESS: Yes, your Honor.

6 THE COURT: Well, I will give you an opportunity
7 to purg yourself if you wish to, but I take it you
8 don't want to purge yourself; is that right?

9 THE WITNESS: No, sir.

10 THE COURT: Do you want to ask anything more?

11 MR. LAUFER: No, your Honor, I believe that I
12 have propounded specific questions and I believe your
13 Honor has directed him to answer the questions and he
14 has continued to refuse.

15 THE COURT: Anything further? Anything
16 specific?

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18 (continued next page)
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1 Serardello - direct

2 THE COURT: Any further specific questions?

3 Do you want to ask one or two?

4 MR. LAUFER: I could round out the names.

5 THE COURT: Ask them, if he knows them.

6 DIRECT EXAMINATION

7 BY MR. LAUFER (Cont'd):

8 Q Are you familiar with a name named Victor
9 LiPari?

10 A I refuse to answer.

11 Q Are you familiar with an individual named Robert
12 De Prizio?

13 A I refuse to answer.

14 Q Are you familiar with an individual known --

15 THE COURT: I order you to answer those ques-
16 tions and you refuse to do so; is that right?

17 THE WITNESS: Yes, sir.

18 MR. LAUFER: We have no further questions.

19 THE COURT: Thank you very much, Mr. Serardello.

20 I believe then we know where we stand.

21 MR. LAUFER: I would ask your Honor, in the
22 Court's discretion, to sign the order to show cause
23 and direct a hearing to occur at your Honor's conven-
24 ience.

25 THE COURT: I'll sign it but you don't have

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1 MR. LA ROSSA: Can we have lunch?

2 THE COURT: Yes. But he wants to make --

3 MR. SGARLATO: I have no application to the
4 order to show cause except that the service of papers
5 be made upon me instead of Arthur Berardelli. Why
6 would they want to serve papers on Mr. Berardelli?

7 THE COURT: I think you have to--

8 MR. SGARLATO: I accepted service of the
9 subpoena.

10 THE COURT: This isn't personal punishment. You
11 can do that. What do you say?

12 MR. LAUFER: If Mr. Sgarlato feels that that is
13 sufficient then he's willing to concede that service
14 merely upon himself --

15 THE COURT: Will you guarantee us that he will
16 get -- the defendant will get a copy?

17 MR. SGARLATO: Yes, your Honor.

18 THE COURT: And that is all that is necessary.

19 THE WITNESS: He's not going to be going anywhere.
20 He has to appear on a certain date.

21 THE COURT: Yes. That's right. But he will
22 probably be, I suppose, certainly released some time
23 this week definitely.

24 MR. SGARLATO: I would hope so. I don't know
25 what stage the proceeding is at. But I understand that

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2 there was a dismissal of two defendants. So it's
3 narrowing down.

4 THE COURT: Yes.

5 All right. You can go to lunch. When do you
6 want to be back here? It is five after one.

7 MR. LA ROSSA: 2:15.

8 THE COURT: How about 2:20, gentlemen?

9 MR. LAUFER: Your Honor, I would ask that the
10 hearing on the order to show cause be as soon as
11 possible, at the Court's convenience.

12 THE COURT: Yes, it will be as soon as possible.

13 MR. SCARLATO: Your Honor, I am --

14 THE COURT: I'm just tied up so much today,
15 maybe tomorrow. But I will give you a date very
16 shortly.

17 MR. SCARLATO: Your Honor, I would request an
18 opportunity to research this area.

19 THE COURT: Why don't you do that?

20 MR. SCARLATO: I have a clogged calendar. I
21 was in five Courts this morning and I still have to go
22 back at 2:00 o'clock on a hearing in Criminal Court. I
23 do not have the opportunity -- I am a sole practitioner.
24 I would like to have an opportunity to do sufficient
25 research which is required to represent my client.
This is a surprise order to show cause.

1 THE COURT: No. You might have expected that.
2 That happens every time.

3 MR. SGARLATO: Your Honor, I'm not saying it
4 doesn't happen every time. It does not happen to me.
5 I was not prepared for this.

6 THE COURT: That's okay. I think --

7 MR. SGARLATO: I would request a few weeks, a
8 month at least.

9 THE COURT: No, you're not going to get any such
10 time. You better forget that. You are going to get it
11 within a week.

12 MR. SGARLATO: Next week is Thanksgiving.

13 THE COURT: That's all right. We are going to
14 get it on very rapidly. It's a simple matter. You
15 don't need any time to research that. The cases are
16 clear, without any peradventure of a doubt. All you
17 have to do is look at the criminal code, USC -- I
18 think it's Title 402 --

19 MR. SGARLATO: 402 is not applicable.

20 MR. LAUFER: 401.

21 THE COURT: 401.

22 MR. SGARLATO: 401 gives no determination of
23 what actually is involved, no specification of time or
24 punishment.

25 MR. LAUFER: That's correct.

1 THE COURT: He will give you a lot of cases.
2 I can pick up some and my law clerk can give you some
3 within three or four hours. It is a very simple
4 proceeding. So you don't need any long time to look
5 that up.

6 But you are going to give me a few cases, you
7 said.

8 MR. LAUFER: With regard to the indeterminate
9 nature of a sentence, yes, I will.

10 THE COURT: On the question of abuse of
11 discretion.

12 MR. LAUFER: Yes. I'm thinking of one particular
13 case.

14 MR. SCARLATO: Indeterminate sentence I would
15 imagine could carry a period of over a year, in which
16 case he would make it incarceration after the trial
17 has been completed.

18 THE COURT: Oh, sure. A criminal proceeding is
19 entirely different from a civil proceeding. Civil is
20 limited to the completion of the trial or the termina-
21 tion of the Grand Jury, as I understand it, whichever
22 is earlier.

23 MR. SCARLATO: If the contempt is committed in
24 front of the Grand Jury.

25 THE COURT: No. In front of me. This is contempt

1
2 twice.

3 MR. SGARLATO: Yes, your Honor. But twice could
4 have been a hundred times. If the US Attorney had
5 offered or requested that the defendant be brought in
6 a hundred times and he refused to answer the question.

7 THE COURT: It would make no difference. It was
8 a criminal contempt.

9 MR. SGARLATO: Your Honor, I am questioning the
10 indeterminate sentence, the open end sentence. If you
11 can sentence the man toten years without a jury trial,
12 I would imagine that is fairly unconstitutional.

13 MR. LAUFER: We will provide cases to the Court.

14 THE COURT: You better look at the cases.

15 MR. SGARLATO: That is why I am asking your
16 Honor for an opportunity to research the matter.

17 THE COURT: There will be no month's adjournment.

18 MR. SGARLATO: Not a month. Give me a few
19 weeks.

20 THE COURT: I will put this hearing down and
21 you better be prepared within tendays at the most.
22 That's all there is to it. That's simple.

23 Now, Mr. Sgarlato, you are not in the State
24 Court and you are going to have to come and give the
25 Federal Court the precedence of your presence.

MR. SGARLATO: I understand.

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3 THE COURT: So it simply will not be any longer
4 than ten days. It will be at the -- the first moment
5 after Thanksgiving. That's when we will have the
6 hearing.

7 You give him the cases you have.

8 MR. LAUFER: Certainly.

9 THE COURT: I will give you -- you don't need
10 any month.

11 MR. SGARLATO: Is an order required to release
12 Mr. Berardelli once this trial is over?

13 THE COURT: I don't think so. Is there? If
14 there is, you can get it now. I will sign it as soon as
15 the case is over.

16 MR. SGARLATO: Is it all right if I present it
17 to your Honor and have you hold it in abeyance until the
18 case is completed?

19 THE COURT: Yes, I can do that. No problem.

20 MR. SGARLATO: Thank you very much.

21 (Luncheon recess.)

22 * * *

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1 he can take the Fifth Amendment. That is not a
2 contempt.

3 THE COURT: I disagree with you on the facts
4 of this case. Now we are not going to get any
5 further with that, Mr. Sgarlato. You are just
6 saying the same thing over and over again. You said
7 that before. You are the person who said he could
8 be prosecuted for his misstatements in the grand
9 jury. You said that on the record.

10 MR. SGARLATO: Yes, I did, your Honor.

11 THE COURT: You advised Mr. Beradelli
12 accordingly. The cases are clear that Mr. Beradelli
13 cannot rely upon the advice of counsel when the
14 Court orders him to testify.

15 MR. SGARLATO: I did not advise him not to
16 testify, your Honor.

17 THE COURT: Well, you advised him he could be
18 prosecuted for perjury on it because of his statement
19 before the grand jury, if he testified differently
20 here.

21 MR. SGARLATO: And you advised him also, your
22 Honor.

23 THE COURT: I did not so advise him. I said
24 what is wrong with that...

25 MR. SGARLATO: If I may read from the transcript

* * * 39a

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1 made, the warrant was so-called planted in the mind of
2 the witness. His belief that any statement he would
3 make which would be contrary --

4 THE COURT: I think I have been very lenient with
5 you in representing a witness under the circumstances
6 inside the court, rather than outside the court, at
7 that time, at the trial.

8 Now, Mr. Sgarlato, the argument is at an end.
9 Please sit down. You are going to have a trial.

10 MR. SGARLATO: May I just submit one case to you?

11 THE COURT: No more cases. No more cases.

12 MR. SGARLATO: In reference to a jury trial, may
13 I be heard?

14 THE COURT: You are wasting my time. Yes.

15 MR. SGARLATO: Your Honor, on page 755 of the
16 transcript, your Honor stated this would not be a jury
17 case.

18 THE COURT: That is right. I changed my mind.
19 It will be a jury case. That is all there is to it.
20 You cannot hold the Court to a statement like that. The
21 law is clear. You must read the law. The law is clear
22 that there can be a jury case. I am going to have it.
23 Please sit down.

24 I am not wasting any more time, Mr. Sgarlato,
25 with hearing your arguments. Now, you have tried my

40a

12 1 patience very very hard this morning and we are going
2 to have a trial as soon as we can. I have other matters
3 to tend to.

4 Now, you can take a brief recess of ten minutes,
5 if you want. We are having a trial and a jury trial
6 very shortly.

7 (continued next page)
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(There is a recess.)

2 THE COURT: There is one case I would like to
3 look at again Mr. Sgarlato.

4 MR. SGARLATO: Which case is that, your Honor?

5 THE COURT: It contains the provision that under
6 United States vs. The United Mine Workers. On the
7 facts of that case, a witness had to answer regardless
8 of the invalidity of the order. Do you remember what
9 that is?

10 MR. SGARLATO: I believe that was Di Mauro
11 your Honor.

12 THE COURT: Let's look at that again. I don't
13 want to argue Mr. Sgarlato the same argument over.

14 MR. SGARLATO: With all due reference to the
15 Court I don't want to argue-I am trying to create a
16 record. If I am over zealous --

17 THE COURT: No, I think you ought to be over
18 zealous. You cannot create a record with arguments.
19 There is no testimony here. You have your briefs
20 and if I am wrong, you will have the same opportunity
21 to make those arguments to the Court of Appeals.
22 I have gone over all of your arguments and your cases.
23 Now there is no point in repeating them.

24 I am interested in looking again at the case
25 that you cited. Yes, this is the case. Why don't we
get 441 Fed --

2 1 MR. SGARLATO: I don't think that I remember
2 if there was an order of the Court, but I could be
3 wrong.

4 THE COURT: Yes, that is a case where he made
5 an effort to have the order vacated.

6 MR. SGARLATO: May I see the photostat again
7 which I gave to the Court?

8 THE COURT: Yes.

9 This is quite different. They resort to the
10 Civil Contempt Proceedings and consequently, the
11 moral of the case seems to me it has no application
12 to the facts in this case. So we will proceed.
13 Call the jury.

14 MR. SGARLATO: Your Honor I have a motion before
15 we proceed.

16 THE COURT: What is your motion?

17 MR. SGARLATO: Your Honor with all due deference
18 to this Court I don't want to prolong this any longer
19 than needed. I am requesting a motion to a continuance
20 on the ground that I was aware that there was going to
21 be a hearing --

22 THE COURT: Motion for continuance denied.
23 Bring out the jury.

24 MR. SGARLATO: For the record may I make my
25 statement?

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THE COURT: Yes, you may.

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MR. SGARLATO: On the ground that I was aware that there was going to be a hearing which would in effect be punishable by a sentence of less than six months and now its turned into a felony trial.

THE COURT: No--it is not a felony trial, but a criminal contempt. You have to expect a criminal contempt. You have to expect a criminal contempt to be tried by a jury and the Court. You have had all the time in the world to prepare. I see no possible ground for a continuance.

MR. SGARLATO: All the time I have had to prepare I was prepared with my motions.

THE COURT: It makes no difference. There is only one witness you have and that is Mr. Bernardelli.

MR. SGARLATO: I am not prepared to go to a jury trial.

THE COURT: I am very sorry. Denied.

Call down the jury.

MR. SUDLER: Your Honor just to clear the record --

THE COURT: This seems to be gamesmanship, pure gamesmanship.

MR. SUDLER: Your Honor I forwarded a request to charge to Mr. Sgarlato last week --

1 MR. SGARLATO: That was on Friday.

2 THE COURT: So what, you can make up a request
3 to charge --

4 MR. SGARLATO: Your Honor, that does not mean that
5 it is going to be a jury trial just because he sends
6 me a proposed charge.

7 THE COURT: I am not going to argue with you.
8 Sit down please.

9 MR. SGARLATO: Your Honor I have another motion.

10 THE COURT: You cannot keep making motions.
11 It is ten minutes to twelve. What is the motion
12 now?

13 MR. SGARLATO: If your Honor feels that he has
14 already a preconceived notion as to the guilt --

15 THE COURT: That is another motion you have?

16 MR. SGARLATO: Yes. If your Honor feels --

17 THE COURT: I have no preconceived notion except
18 that I feel that your cases are not applicable, that
19 is all.

20 MR. SGARLATO: I am not referring to my cases
21 your Honor. I am referring to the fact you were the
22 trial Judge where the defendant was found guilty of
23 contempt and you sentenced him and found him guilty of
24 civil contempt.

25 THE COURT: Yes, that is true.

1
5 MR. SGARLATO: You are trying the same case.

2 THE COURT: That is perfectly proper. The
3 application for disqualification is denied. Now I
4 can't hear any more motions because the jury is going
5 to come in. I am sure that is your motion for
6 disqualification, right?

7 MR. SGARLATO: Yes.

8 THE COURT: Denied.

9 MR. SGARLATO: With all due respect your Honor
10 --

11 THE COURT: I know. It is denied, nevertheless.
12 You had notice that this case was going to be tried
13 before me ten days ago. Now you can't come here the
14 last minute and take the time of the Court with a
15 couple of hours with motions and that sort of thing.
16 You didn't follow any of the rules. I don't blame
17 you for putting it on the record. I mean you have
18 possibilities there.

19 MR. SGARLATO: Thank you, your Honor.

20 THE COURT: Yes, we understand each other,
21 don't we Mr. Sgarlato?

22 MR. SGARLATO: I hope so, your Honor. If I
23 may have the opportunity after your Honor has
24 examined the jury to submit any further questions?

25 THE COURT: To me?

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1
2 evidence?

3 MR. SUDLER: I offered it, your Honor.

4 THE COURT: Is there any objection?

5 MR. SGARLATO: No objection, your Honor.

6 Q I will read all the other parts. The part
7 of the Court, the part of Mr. Laufer and the part of
8 defense counsel. (The following material is quoted:)

9
10 "A R T H U R B E R A R D E L L I, having been first
11 duly sworn by the Clerk of the Court, testified as
12 follows:

13 EXAMINATION

14 BY MR. LAUFER:

15 Q Are you familiar with any individual known
16 as Paul Castellano?

17 A Mr. Laufer, I refuse to answer any questions
18 at this time or any questions pertaining to this matter
19 based upon my fifth and fourteenth amendment rights.

20 MR. LAUFER: Your Honor, I have previously
21 handed up through the Clerk of the Court an applica-
22 tion, an affidavit requesting the Court to confer
23 immunity under Title 18 of United States Code,
24 Section 6003, upon this witness.

25 THE COURT: Pursuant to Section 6003 of

Greenidge

1
2 Title 18, the Court, pursuant to the request of
3 the Assistant United States Attorney, will give
4 you use immunity. You will be privileged against
5 prosecution with respect to any and all matters
6 to which you may be interrogated before the United
7 States District Court of this district, and I will
8 Read that statute to you word for word so that
9 you will understand it.

10 MR. LA ROSSA: Do you want 6003, your Honor?

11 THE COURT: (Document handed to Court.)

12 Mr. Berardelli, this Court will give you
13 immunity from any prosecution with respect to any
14 testimony or other information you may give in this
15 Court in this case, so that none of that testimony
16 may be used against you in a criminal case except
17 a prosecution for perjury in giving a false
18 statement or otherwise not complying with this
19 immunity which the Court is about to give you.
20 So, pursuant to an order of this Court, you are
21 given immunity.

22 Pursuant to Section 6003 of Title 18 and 28
23 (CFR-0.175), you are privileged against self-
24 incrimination as to all matters which you may be
25 interrogated about before the United States

1
2 District Court of the Eastern District of New
3 York in this case, and it is further ordered
4 that no testimony or other information compelled
5 under this order, which I am about to sign, or
6 any information directly or indirectly derived
7 from the testimony or other information may ever
8 be used against you, except the prosecution for
9 perjury, the giving of a false statement or other-
10 wise failing to comply with this order.

11 I will read the whole order so you have no
12 doubt as to what it says.

13 It says here:

14 That Arthur Berardelli has been called to
15 testify before the United States District Court
16 for the Eastern District of New York in the matter
17 of United States v. Paul Castellano, et al, and

18 Two, that Arthur Berardelli has refused to
19 testify on the basis of his privilege against
20 self-incrimination.

21 That is true, is it not?

22 THE WITNESS: Yes.

23 THE COURT: That in the judgment of the
24 said United States Attorney, the testimony from
25 said Arthur Berardelli may be necessary to the

1
2 public interest, and,

3 Four, the aforesaid application filed herein
4 has been made with the approval of the Assistant
5 Attorney General in charge of the Criminal Division
6 of the Department of Justice, pursuant to the
7 authority vested in him by Title 18, United States
8 Code, Section 6003 and 28 CFR 0.175, and I have
9 an affidavit here signed by Jacob Laufer.

10 MR. LAUFER: That is the affidavit.

11 THE COURT: That is what I said.

12 That is what I am talking about.

13 MR. LAUFER: There is a further application
14 in letter form --

15 THE COURT: Yes. from Richard L. Thornburgh --

16 MR. LAUFER: That is the authorization from
17 the Assistant Attorney General. There is a letter
18 from David Trager.

19 THE COURT: From David Trager?

20 MR. LAUFER: Yes, your Honor.

21 THE COURT: Let me finish.

22 It says:

23 'The aforesaid application filed herein has
24 been made with the approval of the Assistant
25 Attorney General in charge of the Criminal Division

1 of the Department of Justice, pursuant to the
2 authority vested in him by Title 18, United States
3 Code, 18 U.S.C. 6003 and 28 CFR 0.175.
4

5 , therefore, it is ordered pursuant to
6 Title 18, United States Code, Section 6002, that
7 the said Arthur Berardelli give testimony which
8 he refuses to give on the basis of his privilege
9 against self-incrimination as to all matters about
10 which he may be interrogated before the said
11 United States District Court for the Eastern
12 District of New York in the matter of United States
13 v. Paul Castellano, et al; and it is further
14 ordered that no testimony or other information
15 compelled hereunder, or any information directly
16 or indirectly derived from such testimony, or
17 other information, may be used against the said
18 Arthur Berardelli in any case, except a prosecu-
19 tion for perjury, giving a false statement or
20 otherwise failing to comply with this order.

21 'This order shall become effective only if
22 after the date of this order the said Arthur
23 Berardelli refuses to testify or provide other
24 information on the basis of his privilege against
25 self-incrimination.'

Ask him again.

MR. LAUFER: I ask you again, are you familiar with any individual whose name is Paul Castellano?

THE WITNESS: Mr. Laufer, I refuse to answer at this time.

MR. LAUFER: Mr. Berardelli, is it your position that you will continue to refuse to answer any questions that I will propound to you today?

THE WITNESS: Yes, Mr. Laufer.

THE COURT: I order you to answer further questions in connection with this case of United States v. Paul Castellano, et al. Do you still refuse to answer the questions?

THE WITNESS: Yes, your Honor.

THE COURT: I hereby punish you for contempt to take effect immediately.

MR. LAUFER: I have a proposed order for your Honor's consideration.

MR. SGARLATO: May I be heard?"
(This ends the quoted material.)

MR. SUDLER: Your Honor, at this time the government offers as Government's Exhibit No. 3 in evidence, pages 751 through 760. I ask that it be

1
2 read to the jury. May it be received, your Honor?

3 THE COURT: Yes, if there is no objection.
4 Is there any objection?

5 MR. SGARLATO: Where is he going to start
6 on that page?

7 MR. SUDLER: Line 11 on page 751.

8 THE COURT: Let me get it. Page 751, line 11.

9 MR. SUDLER: It will start at the point
10 where the witness, Arthur Berardelli, entered the
11 courtroom on page 751.

12 THE COURT: Yes, I understand there is no
13 objection to the admission of this testimony or
14 the transcript into evidence?

15 MR. SGARLATO: No, your Honor.

16 MR. SUDLER: Your Honor, at this time I
17 would like to inform the jury this is the transcript
18 of November 15, 1976, five days after the transcript
19 that was just read and after the finding of civil
20 contempt. Reading from page 751 at line 11:

21 (The following material is quoted:)

22 "(At this point the witness Arthur Berardelli
entered the Courtroom.)"

23 THE COURT: All right, take the stand,
24 Mr. Berardelli.

25 Mr. Berardelli, I think it was on Thursday,

1
2 was it --

3 MR. LAUFER: I believe it was on Wednesday,
4 your Honor.

5 THE COURT: Anyway, it was Wednesday or
6 Thursday you might even --

7 THE WITNESS: Wednesday, sir.

8 THE COURT: Wednesday.

9 You took the stand and in spite of the fact
10 that the Government gave you use immunity, you
11 refused to testify.

12 I then ordered you to testify and you again
13 refused.

14 THE WITNESS: Yes, sir.

15 THE COURT: I thereupon incarcerated you for
16 contempt of this Court in the presence of the Court.

17 Now, you were brought back here a second
18 time for an opportunity to testify, if you wished
19 to change your mind because the Court believes
20 it is necessary to inform you, or at least it is
21 advisable to inform you that in addition to being
22 able to punish you for civil contempt, you may be
23 punished for criminal contempt, if you continue your
24 refusal to testify in this case under the circum-
25 stances.

1
2 Now, do you understand that the Court, when
3 an action is brought, when an order to show cause
4 is brought, and a show cause already has been
5 brought, that the Court will be able to punish you
6 for criminal contempt for your refusal to testify?

7 Do you understand that?

8 THE WITNESS: Yes, sir.

9 THE COURT: All right.

10 MR. LAUFER: Your Honor, may we proceed with
11 some questioning?

12 THE COURT: Yes.

13 MR. LAUFER: Has the witness been sworn,
14 your Honor?

15 THE COURT: Yes, he has been sworn.

16 A R T H U R B E R A R D E L L I , having been
17 previously sworn, continued to testify as follows:

18 DIRECT EXAMINATION

19 BY MR. LAUFER:

20 Q Mr. Berardelli, are you familiar with an
21 individual known as Paul Castellano?

22 A Mr. Laufer, at this time I refuse to answer
23 any questions.

24 Q Are you familiar with an individual by the
25 name of Angelo Scarpulla?

1
2 THE COURT: I order you to answer those
3 questions now again.

4 THE WITNESS: I refuse, your Honor.

5 THE COURT: You refuse to answer those
6 questions?

7 Ask him a few more.

8 BY MR. LAUFER:

9 Q Are you familiar with an individual by the
10 name of Angelo Scarpulla?

11 A I refuse to answer, Mr. Laufer.

12 Q Are you familiar with Frank Gugliemini?

13 A The same, I refuse to answer.

14 Q Are you familiar --

15 THE COURT: I order you to answer those
16 questions.

17 Now go ahead.

18 Do you still refuse?

19 THE WITNESS: Yes, your Honor.

20 THE COURT: All right.

21 BY MR. LAUFER:

22 Q Are you familiar with Joseph Castellano?

23 A I refuse to answer, Mr. Laufer.

24 THE COURT: On what grounds, by the way?

25 On what grounds?

THE WITNESS: My violation of my Fifth

Amendment right.

THE COURT: No, you have been given use immunity. The Government has said it will not prosecute you for any statements that you make in this case which may incriminate you, and that is the right you have under the Fifth Amendment.

You understand that, don't you?

THE WITNESS: Yes, sir.

THE COURT: You still understand that you cannot be prosecuted for any statements you make in this case?

THE WITNESS: Yes.

THE COURT: Now you still say you refuse?

THE WITNESS: Yes, sir.

THE COURT: Not on Fifth Amendment grounds, on what grounds?

MR. SGARLATO: Your Honor, as Mr. Berardelli's attorney, I would say that the questions being propounded to him, which are being asked him, would be the basis of a hearing, a criminal hearing.

THE COURT: No, not at this point.

MR. LAUFER: Your Honor, I believe that in order to effectuate the provisions of Section 401,

1
2 it will be necessary for your Honor to schedule
3 a hearing at a reasonable time.

4 THE COURT: But it will not be a jury case.

5 MR. LAUFER: Not a jury case, no, your
6 Honor.

7 THE COURT: There has to be a separate
8 order to show cause.

9 MR. SGARLATO: Yes, your Honor, and Mr.
10 Berardelli gave us his reasons last Wednesday.

11 THE COURT: His reasons were Fifth Amendment
12 and I asked does he understand that he cannot be
13 prosecuted because he has use immunity

14 All right.

15 MR. SGARLATO: Your Honor, we told you,
16 Mr. Berardelli and myself were at the side and
17 informed your Honor of the reasons that Mr.
18 Berardelli didn't wish to testify.

19 THE COURT: Those reasons have no basis
20 whatsoever, the reasons were you were afraid that
21 the Government may prosecute him or what, I mean,
22 you know, they are absolutely invalid and frivolous
23 reasons, and you know that as well as I do.

24 MR. SGARLATO: Your Honor, Mr. Berardelli has
25 given his reasons.

1
2
3 THE COURT: All right.

4 He felt that the Government may prosecute
5 him or place him under duress, and those were
6 the reasons you gave.

7 MR. SGARLATO: There were further reasons,
8 your Honor.

9 THE COURT: Well?

10 MR. SGARLATO: There is testimony which
11 Mr. Berardelli will refute and under those
12 circumstances the United States Attorney
13 would prosecute him for perjury.

14 THE COURT: You mean that he will recant
15 some of the statements he made in the Grand Jury?

16 MR. SGARLATO: Yes, your Honor.

17 THE COURT: And under the circumstances --

18 MR. SGARLATO: (Continuing) The United
19 States Attorney would prosecute him for perjury.

20 THE COURT: There is nothing wrong with
21 that, is there?

22 MR. LAUFER: Your Honor, I believe --

23 MR. SGARLATO: Mr. Berardelli would have to
24 put himself in such a position where he would be
25 testifying and he could be cited for perjury.

THE COURT: He has to tell the truth.

1
2 MR. SGARLATO: Where he is going to be
3 prosecuted for perjury?

4 THE COURT: That is when they recant.

5 Now you can't do that, you can't make a
6 statement under oath and then --

7 MR. SGARLATO: Then there would be no
8 immunity involved because he is going to be given -

9 MR. LAUFER: Your Honor, I think Mr.
10 Sgarlato's statements are more appropriate for a
11 hearing should your Honor call a hearing.

12 THE COURT: I want to give him a last clear
13 chance, at the hearing it is too late.

14 MR. LAUFER: I am afraid it will be.

15 THE COURT: At the hearing it is frozen.

16 Do you understand that, Mr. Berardelli? Do
17 you understand that?

18 THE WITNESS: Yes, your Honor.

19 THE COURT: Well, I will give you an oppor-
20 tunity to purge yourself if you wish to, but I
21 take it you don't want to purge yourself; is
22 that right?

23 THE WITNESS: No, sir.

24 THE COURT: Do you want to ask anything
25 more?

1
2 MR. LAUFER: No, your Honor, I believe that
3 I have propounded specific questions and I believe
4 your Honor has directed him to answer the
5 questions and he has continued to refuse.

6 THE COURT: Anything further? Any further
7 specific questions? Do you want to ask one or two?

8 MR. LAUFER: I could round out the names.

9 THE COURT: Ask them, if he knows them.

10 DIRECT EXAMINATION

11 BY MR. LAUFER (Cont'd):

12 Q Are you familiar with a man named Victor
13 LiPari?

14 A I refuse to answer.

15 Q Are you familiar with an individual named
16 Robert De Prizio?

17 A I refuse to answer.

18 Q Are you familiar with an individual known --

19 THE COURT: I order you to answer those
20 questions and you refuse to do so; is that right?

21 THE WITNESS: Yes, sir.

22 MR. LAUFER: We have no further questions.

23 THE COURT: Thank you very much, Mr.
24 Berardelli.

25 I believe then we know where we stand.

MR. LAUFER: I would ask your Honor, in th

1
2 Court's discretion, to sign the order to show
3 cause and direct a hearing to occur at your
4 honor's convenience.

5 THE COURT: I'll sign it but you don't have
6 to have it this minute.

7 MR. LAUFER: No, your Honor.

8 THE COURT: I'll sign it.

9 Thank you very much Mr. Berardelli.

10 (Witness excused.)"

11 (This ends the quoted material.)

12 THE COURT: That is all?

13 MR. SUDLER: Yes, your Honor.

14 THE COURT: Let's have a sidebar, please.

15 (A sidebar discussion.)

16 THE COURT: I think there was some reference
17 to some reasons which Mr. Sgarlato was given at a
18 side bar. I think that those reasons should be
19 brought out on that side bar portion of the con-
20 ference. It should be read. Nowhere is it --

21 MR. SGARLATO: I have it.

22 THE COURT: Let me see it.

23 MR. SGARLATO: Page 351.

24 THE COURT: Is this where it was?

25 MR. SGARLATO: Yes. I came in front of the
Court at this time.

* * *

1
2 was some other reason mentioned at the side bar and
3 this is the side bar as I understand, is that right,
4 Mr. Sgarlato?

5 MR. SGARLATO: Yes, your Honor.

6 MR. SUDLER: I will have to read all the
7 parts myself then.

8 THE COURT: You read all the parts because in
9 actuality this is simply a lawyer's talk. There is
10 no testimony or any statement by Mr. Berardelli there
11 at all. He just happens to have been there. This is
12 before the Court.

13 MR. SUDLER: (Quoting from a transcript.)
14 (The following material is quoted:)

"MR. SGARLATO: My name is Robert Sgarlato. I
15 have just been informed by the U.S. Attorney that he
16 is offering -- he is only being offered use
17 immunity.

18 THE COURT: That's all that they ever offer.

19 MR. SGARLATO: And my client has basically
20 committed certain crimes in the past.

21 THE COURT: Nothing to do with this case.

22 MR. SGARLATO: But involving this case as well
23 as involving --

24 THE COURT: Wait a minute. Mr. Laufer, you
25 better step up here.

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MR. LAUPER: Certainly, your Honor.

THE COURT: All right, go ahead.

MR. SGARLATO: Mr. Berardelli --

THE COURT: He says you're only offering use immunity, and his client may be indicted with respect to other offenses which did not stem from anything in this case, and he wants complete transactional --

MR. SGARLATO: Complete transactional immunity. And aside from that, there is testimony, there is evidence to the effect that Mr. Berardelli was at one time, when he first started testifying in front of the grand jury, he was threatened with a term of jail imprisonment.

THE COURT: Whose that?

MR. SGARLATO: He was threatened that if he did not cooperate. Now, he gave testimony in front of the grand jury.

THE COURT: That he was threatened.

MR. LAUPER: The allegations were in fact made by Mr. Sgarlato " --

(This ends the quoted material.)

MR. SGARLATO: This part was supposed to be deleted, your Honor. It is irrelevant.

THE COURT: All right.

MR. SUDLER: (continues to read from a

1 transcript.

2 "Your Honor, if your Honor will recall, they
3 were brought up by Mr. Cohn before the deposition
4 was to occur.
5

6 "Now, returning to the request for trans-
7 actional immunity, the Supreme Court in Kastigar v.
8 the United States said that use immunity is wholly
9 sufficient to supplant the Fifth Amendment privilege.
10 This has been recently affirmed by the Second Circuit
11 in Kurzer v. the United States. I believe it is
12 524 said 2nd.

13 "THE COURT: No question about that. Before
14 we go into that --

15 "MR. LAUFER: Yes.

16 "THE COURT: -- that question, you have a case
17 which states that the informant in a conspiracy
18 with others can still remain as a member of the
19 conspiracy."

20 Your Honor, I am not sure this portion is
21 relevant.

22 THE COURT: You dropped your voice.

23 MR. SUDLER: This portion may not be relevant.
24 Does your Honor wish me to read it anyway?

25 THE COURT: If it is not relevant you better

1
2 scratch it out so you know what you are going to
3 give the jury when they go into the jury room. There
4 are other portions you struck out. All right,
5 proceed.

6 MR. SUDLER: (reading from a transcript)

7 "MR. SGARLATO: Even though that may be
8 sufficient, Mr. Berardelli is in fear right now that
9 if he testifies and does not testify in accord with
10 the U.S. attorney, that the U.S. attorney's office
11 will engage proceedings against him on claiming
12 possible perjury or --

13 "THE COURT: Reinstating any crime which he
14 has testified to in front of the grand jury, which
15 is at the time he testified during the last three
16 years or four years.

17 "MR. LAUPER: Mr. Berardelli, the use of
18 Mr. Berardelli's testimony is immunized and may not
19 be used against him.

20 "MR. SGARLATO: What about the testimony he
21 gave in the grand jury?

22 "THE COURT: That's the same thing.

23 "MR. LAUPER: Well, your Honor, if --

24 "THE COURT: On this case.

25 "MR. LAUPER: Yes. Well, the testimony that

gave in the Grand Jury--

128

"THE COURT: It was only on this case.

"MR. LAUFER: It was only on this case. That testimony can, however, be used against him, the prior testimony. The whole point of the use immunity statute is that as Mr. Berardelli will sit on that witness stand, any statements that may be taken from him should not be used against him if claims his privilege.

"THE COURT: He didn't get use immunity in the grand jury.

"MR. SGARLATO: He didn't get any immunity.

"MR. LAUFER: No, he got an informal --

"MR. SGARLATO: Your Honor, I --

"MR. LAUFER: If your Honor wishes I have a memorandum.

"THE COURT: What kind of informal --

"MR. LAUFER: He got immunity that if he cooperated with the government he would not be prosecuted on the basis of anything that he said before the grand jury.

"THE COURT: The grand jury?

"MR. LAUFER: Yes, your Honor.

"THE COURT: Well --

"MR. LAUFER: -- which he --

1
2 "THE COURT: That is informal --

3 "MR. LAUFER: That is the full equivalent of
4 immunity.

5 "THE COURT: That is in writing.

6 "MR. LAUFER: It is not. Well, it was not in
7 writing. But the government has reduced it to
8 writing at this point, in a document that was handed
9 to defense counsel.

10 "MR. SGARLATO: I didn't see that.

11 "THE COURT: If you have that, where is it?

12 "MR. LAUFER: I have it.

13 "THE COURT: If you have that, I don't know
14 what you are talking about.

15 "MR. SGARLATO: I don't have it.

16 "THE COURT: You've got more than use immunity.

17 "MR. SGARLATO: I don't have it. I didn't
18 see it.

19 "THE COURT: He didn't mention it to me.

20 "MR. SGARLATO: What I am worried about --

21 "THE COURT: Because, you see I have had these
22 cases before. The witness, if he gets use immunity
23 and if he doesn't testify, then he goes up to the
24 Metropolitan Correctional Center until he decides to
25 testify or until the grand jury terminates. I think

1
2 the grand jury is in session and won't terminate for
3 quite a while.

4 "There is no question. This is an everyday
5 proceeding.

6 "MR. SGARLATO: It is an everyday proceeding,
7 but it is not an everyday proceeding when he testifies
8 in front of a grand jury without --

9 "THE COURT: If you get both, you've got more.

10 "MR. LAUFER: Let the record reflect that I
11 am handing 3500-16 to Mr. Sgarlato. The contents of
12 that exhibit would in any event not have any bearing
13 upon the requirement that he testify before this
14 Court.

15 "THE COURT: Yes, I understand that. Of course,
16 that means, I imagine, that he is not excused from
17 perjury in the sense that --

18 "MR. LAUFER: No.

19 "THE COURT: If he's got statements in the
20 grand jury one way and he now testifies the other
21 way --

22 "MR. LAUFER: Well, you see, your Honor, we
23 could not -- Assuming that he testified to A, for
24 example, in the grand jury, and then testified not
25 to A before this Court, we could not prosecute him

1
2 for perjury because this testimony is not -- would
3 not be admissible as evidence.' We cannot use that
4 against him.

5 "THE COURT: Well --

6 "MR. LAUPER: The point simply --

7 "THE COURT: But not only that, but in other
8 respects. If he doesn't have anything to do with
9 the grand jury testimony --

10 "MR. SGARLATO: Your Honor, it says here on
11 page 2, we've also understood that Mr. Berardelli
12 should not be prosecuted for his involvement in the
13 loansharking activities of Paul Castellano and his
14 associates if it were determined that he had been
15 fully cooperative with the Government.

16 "Mr. Berardelli was advised on many occasions
17 that if decided not to on his original commitment to
18 testify in this matter, he could be expected to be
19 prosecuted for his own involvement."

20 THE COURT: Is there anything further than
21 that?

22 MR. SUDLER: It goes on like this --

23 MR. SGARLATO: I think that is it.

24 THE COURT: What page is that?

25 MR. SUDLER: We're up to page 358.

* * *

1
2 A I understood some of it

3 Q Well, what didn't you understand?

4 A I didn't understand the part about perjury.

5 Q Did you testify in front of a grand jury
6 several years prior to your appearance at the trial of the
7 United States v. Paul Castellano?

8 A Yes, I did.

9 MR. SUDLER: Objection.

10 THE COURT: I will allow it.

11 Q Did you make certain statements at that
12 session of the grand jury?

13 A Yes, I did.

14 Q Would your testimony at the trial of the
15 United States v. Castellano, would that testimony have
16 differed in any respect to your grand jury testimony?

17 A Yes, it would have.

18 Q Were you perfectly clear as to the Judge's
19 instructions as to what you would be guilty of regardless
20 of this immunity?

21 A The Judge said that I had to tell the truth
22 and after thinking of what I did say at the grand jury and
23 trying to reflect, there were certain things that I had
24 said that were not right, I was under a lot of pressure.

25 MR. SUDLER: Objection.

1
2 A I mean --

3 Q Just speak without relating to your status
4 of fear or nerves or whatever. Just speak.

5 A Well, after thinking about certain things, you
6 know, you have time to think and clear it later on. I felt
7 I made some mistakes and certain things were not true. And
8 for me to correct them and put myself in a position of lying
9 I was afraid of perjury.

10 Q Would that lying have taken place as a result
11 of your giving testimony at the trial or at the grand jury?

12 A At the trial.

13 Q You would have committed perjury at the trial?

14 A Well, in order to correct some of the things
15 I had said the Government would have come against me for
16 perjury.

17 Q This is based upon your belief that you had
18 stated a falsehood in front of the grand jury?

19 A Yes, sir.

20 THE COURT: All right. Is there anything
21 further?

22 MR. SGARLATO: If I may your Honor.

23 Q Mr. Berardelli, I refer to a part of the
24 transcript which was read into testimony and we all heard.

25 At page 354 --

* * *

1 "THE COURT: Under those circumstances --

2 "MR. SGARLATO: The United States Attorney
3 would prosecute him for perjury.

4 "THE COURT: There is nothing wrong with
5 that, is there?"

6 Q Does this leave in your mind, Mr. Berardelli,
7 that you could not, that this immunity which the Court gave
8 to you was a protection of the fifth amendment privilege?

9 A It was not at all.

10 MR. SUDLER: Objection.

11 Q Is there any doubt in your mind --

12 MR. SUDLER: Objection. Can we get a ruling
13 please, counsel?

14 THE COURT: What we have to understand, ladies
15 and gentlemen of the jury is the whole transcript and
16 whether a reasonable man would understand from the
17 whole transcript whether this man was given immunity
18 from prosecution by reason of any statement he made
19 at that particular trial time, nothing else. Now
20 we had fear. That is not an excuse. If he acted
21 on advice of counsel, that is not an excuse. It
22 can't be. The law is clear on that. Now, very well,
23 next.

24 MR. SGARLATO: Can you read back my previous
25

1
2 THE COURT: Well, you understood it except
3 you did not admit that you didn't get immunity for
4 prosecution of perjury. That is what you understood.
5 So you understood it, isn't that true?

6 THE WITNESS: But in clarifying what I had
7 said at the grand jury I would have put myself in
8 jeopardy.

9 THE COURT: You would have perjured yourself
10 at the trial?

11 MR. SGARLATO: He would have been --

12 THE COURT: Now, you are not on the stand --

13 MR. SGARLATO: He testified to this before.

14 THE COURT: Let us proceed. You see, the
15 statute is quite clear and this is right from the
16 statute word for word as a matter of fact, isn't it?

17 MR. SGARLATO: Yes, your Honor.

18 Q Did you intentionally refuse to obey this
19 order?

20 A No, sir.

21 Q Did you have reasonable ground in your mind --

22 THE COURT: That is a conclusion and the
23 objection is sustained. The jury is going to decide
24 all that. Now, that question is out. The question
25 is whether he intended to do it or not. The

1 question is whether he understood what he was doing.

2 He did refuse to testify, didn't he --

3 THE WITNESS: Not out of --

4 THE COURT: No, did you refuse to testify
5 at the trial of the United States v. Castellano?

6 THE WITNESS: On the fear that I might do
7 something wrong --

8 THE COURT: I did not ask you that. Your
9 question is yes or no.

10 THE WITNESS: Yes, I did refuse.

11 THE COURT: All right, let us proceed.

12 Q Did you interpret more than one meaning
13 from the instructions of the Court as to the full extent
14 of your immunity?

15 A Yes, I did.

16 Q Were you about to lie if you took the stand?

17 A Well, not lie. I wanted to clarify statements
18 that I had made.

19 Q Did you make statements which you had, which
20 you wished to recant in front of the grand jury?

21 A Yes, I did.

22 Q So therefore --

23 THE COURT: Didn't we cover this? We are
24 not going to cover this any more.

25 * * *

1
2 once again, did you understand that the reference to a
3 perjury prosecution, and this is very important, refers
4 to perjury at the trial after the immunity, did you under-
5 stand that?

6 A No.

7 Q What did you understand? What was your
8 understanding?

9 A I understood that if I took the stand and
10 answered questions and tried to clarify things that I said
11 at the grand jury it would be used against me.

12 THE COURT: He is talking about grand jury.

13 Q You are not answering the question.

14 A I can't. That is the only thing I can
15 explain.

16 MR. SGARLATO: He is referring to the trial,
17 going back to the grand jury.

18 MR. SUDLER: No, I am not referring to the
19 grand jury. It is very clear I am referring to the
20 trial.

21 THE COURT: He does not answer the question.

22 A The question is this, Mr. Berardelli. When the
23 order was read to you as to immunity, where all the
24 statements you might make at the trial except
25 perjury, did you understand that to mean that you

1
2 were immunized from any prosecution by reason of
3 those statements except if at that trial you perjured
4 yourself? Not with respect to anything that came
5 before the trial, but at or after the trial. Didn't
6 you understand that?

7 THE DEFENDANT: Except the trial, based on
8 testimony from the grand jury that I had given --

9 THE COURT: No, I don't know what it is going
10 to be based on. That is the point --

11 THE DEFENDANT: That was, that is what I
12 was in fear of.

13 THE COURT: Didn't you hear me read the things
14 to you several times? ^B All right, it is up to counsel.

15 Q Come now, isn't it a fact that you understood
16 very well that immunity was immunity, it meant no prosecu-
17 tion. All you had to do, Mr. Berardelli, was tell the
18 truth and you would have been out that courtroom door and
19 that would have been the last you would have seen of us.
20 Isn't that a fact?

21 MR. SGARLATO: Objection as being repetetive.

22 THE COURT: You are right. Objection is
23 sustained.

24 Q You knew if you told the truth at the trial
25 nothing could happen to you, didn't you?

1
2 MR. SGARLATO: Objection.

3 THE COURT: I will allow that. That is simply --

4 MR. SGARLATO: You keep --

5 THE COURT: Just answer the question. Did you
6 or did you not know that if you told the truth at
7 the trial, that there would be no possibility of or
8 availability or power on the part of the prosecutor
9 to prosecute you for anything?

10 THE DEFENDANT: No, I didn't understand that,
11 your Honor.

12 Q Well, what did you think the statement made
13 to you by the Court on about three or four occasions, which
14 statement I will read. The statement I am referring to is
15 on page 380 line 10.

16 "Pursuant to Section 6003 of Title 18 the Court
17 pursuant to the request of the Assistant United States
18 Attorney will give you use immunity. You will be
19 privileged against prosecution with respect to any
20 and all matters to which you may be interrogated
21 before the United States District Court of this
22 district. I will read the statute to you word for
23 word so you will understand it."

24 Now, what is confusing about that statement?

25 MR. SGARLATO: Objection, your Honor.

1
2 A I don't understand it.

3 THE COURT: He didn't understand and he
4 said it. Now I believe a reasonable man under the
5 circumstances would understand.

6 Q What is the extent of your education?

7 A I finished eighth grade and I finished high
8 school.

9 Q Did you attend college by any chance?

10 A No, sir.

11 Q Did you ever tell anybody you attended college?

12 A I don't think I have. I don't remember.

13 Q Did you take English courses in high school?

14 A I didn't do good. I didn't get good marks.

15 Q Are there any particular words in there
16 that you don't understand, in that statement that I read
17 to you?

18 MR. SGARLATO: Objection, your Honor.

19 A May I be --

20 Q Immunity or privilege against prosecution --

21 THE COURT: I think the objection is sustained.

22 He has gone over that. He said he did not under-
23 stand.

24 Q Now after you were held in civil contempt,
25 Mr. Berardelli, you were incarcerated in the Metropolitan

* * *

1 the Grand Jury?" And he said, "Yes. Several people
2 promised that to me. Mr. Eberhardt, Mr. Aranwald,
3 Mr. Shorr." He was promised that he won't be prosecuted.
4 That's why he testified and certainly had he taken the
5 stand - -

6 MR. SGARLATO: I object unless there is a
7 clarification.

8 THE COURT: No, I think you brought it up. I
9 will overrule your objection. I think it's in the
10 record.

11 MR. SUDLER: He couldn't have been prosecuted,
12 ladies and gentlemen of the Jury, based on anything he
13 said once he had been given immunity on that stand.
14 A Let's pose an example just to make it clear because
15 I really fear there would be some slight doubt in your
16 mind about this and I don't want any doubt to be there
17 whatsoever. Let's suppose that in the Grand Jury
18 Mr. Beradelli sais, "A" and that when he testified at
19 trial he testified and said, "B", that contradicted
20 "A." Since that testimony, "B" was immunified [sic] it could
21 not have been used against him to prove perjury in
22 the Grand Jury. We would have been precluded from
23 using it. We couldn't have used it. He couldn't have
24 been prosecuted. The judge told him this, time and time
25 and time again. B Please, ladies and gentlemen, don't

* * *

* * *

1 refusing to give testimony pursuant to an Order of
2 Immunity signed by this Court on November 10, 1976
3 during the trial of U. S. versus Paul Castellano on the
4 indictment number 76CR521 in the Eastern District of
5 New York, and why this Court shouldn't grant the U. S.
6 of America such other and further relief as may be
7 proper."

8 Let me therefore read to you the pertinent
9 portion of the Title 18 U. S. Code Section 401 upon
10 which this Order to Show Cause is based and this is the
11 statutory provision enacted by Congress. Now the
12 pertinent provision appears in Section 401 Title 18
13 Subdivision 3. It says, "The court of the United
14 States shall have power to punish by fine or
15 imprisonment at its discretion such contempt of its
16 authority and none other as free disobedience or
17 resistance to its lawful writs process, order, decree,
18 or command," end of quotation.

19 That is the statute which is being applied in
20 this case. It's further the law that in this type of
21 criminal contempt case the trial may be before a
22 jury and that is why you have been called.

23 There are four elements of this offense and the
24 Government must prove each and every one of these
elements beyond a reasonable doubt before you can

1 find this defendant guilty. The elements are, first that
2 the court gave this defendant certain orders directing
3 him to answer questions and testify.

4 Second, the court gave him immunity against
5 prosecution for any statements he may make in the
6 trial of that case and connected there with. That is
7 the second.

8 Third, that the defendant disobeyed those orders
9 and fourth that the defendant acted willfully
10 and knowingly in disobeying those orders.

11 Concerning the first element relating to the
12 orders given by this court if you find from the
13 evidence that this court did give orders I instruct you
14 as a matter of law that these orders to testify were
15 lawful and therefore proper in every respect. I
16 instruct you that those orders, if you find that they
17 were given, didn't violate any constitutional or other
18 legal rights of this defendant.

19 Now I told you next with describing the elements
20 which you must find to be proven by the Government in
21 order to convict you must find that this defendant
22 disobeyed this Court Order and did so willfully and
23 knowingly. I have also instructed you that one of
24 the elements of the offenses that gave this defendant
25 immunity against any testimony that he might make in

1 the trial of the United States versus Paul Castellano
2 except for perjury and that, "except for perjury," is
3 in the statute and it means except if he perjures
4 himself in the trial for which he was given immunity;
5 nothing else.

6 Now, what is meant by willfully and knowingly?
7 Let's bring it down to specifics in this case rather
8 than talking in the abstract. In instruct you if you
9 find beyond a reasonable doubt that this defendant
10 understood the extent of his immunity and understood
11 this Court's orders and consciously refused to obey
12 those orders, then the defendant's conduct is
13 willfull and it was knowing. Of course, if you find
14 that he didn't understand the extent of his immunity
15 or didn't understand the Court's orders you, of course,
16 can't find that he willfully and knowingly disobeyed
17 the Court's orders.

18 You will recall, according to the evidence in
19 the transcript he asserted his constitutional privilege
20 against testifying in ways that might incriminate
21 him. You also recall that this Court granted the
22 defendant immunity from prosecution and you will recall
23 as I understand it from the testimony, that the
24 defendant stated he understood that he had received
25 immunity. After being granted immunity this defendant

1 raised a question of self incrimination again. I
2 instruct you that the privilege against self
3 incrimination is not a valid reason for refusing to
4 testify in this court after this Court granted this
5 defendant immunity. Privilege against self incrimina-
6 tion is not a defense in a criminal contempt case and
7 invoking the privilege in the earlier proceeding was no
8 defense after the defendant was granted immunity.

9 Lest there be no confusion, I'd like to make that
10 clear. You will recall that the defendant asserted
11 certain additional grounds for his refusal to testify.
12 These are points of law which the Court held didn't
13 constitute valid reasons for the defendant to refuse
14 to testify and none of these grounds present any valid
15 defense to the present criminal contempt case, unless
16 you find he didn't understand what his immunity was.
17 The Fifth Amendment was not a defense because the im-
18 munity immunized him against any prosecution for state-
19 ments that might incriminate him except perjury itself.

20 Now, the only question for you, the jury, to
21 determine whether this defendant understood the
22 instructions of the Court as to his immunity and
23 that the Court by ordering him to testify, rejected
24 the objection raised by the defendant and his counsel
25 who was here, and that the order required him

* * *

* * *

1 say what the verdict is. The verdict should be
2 announced in open court where we will all gather at
3 that time and you will need to announce guilty or not
4 guilty as to this defendant. If you desire to examine
5 any of the exhibits I don't think there were any other
6 exhibits except the transcripts and if you desire to
7 examine them they will be delivered to you upon request.
8 In fact, they can be delivered to you immediately and
9 if after you have retired you desire to be informed
10 on a point of law arising in the case or of any part
11 of the testimony clarified you should be asked to return
12 to the court for further instructions. At this point
13 I will take a five minute recess in order that I hear
14 applications to be made by counsel and I will ask you
15 not to consider this case until you are brought back
16 in after this short recess.

17 (Thereby the Jury left the courtroom at the time
18 noted 1:20 p.m.)

19 THE COURT: Yes, Mr. Sgarlato?

20 MR. SGARLATO: Excuse me, Your Honor. I
21 respectfully object to the portion of the charge wherein
22 you refused to charge as requested on the element of
23 intent.

24 THE COURT: Yes, by the way, you ought to mark
25 those two requests for identification and put them on

1 the record.

2 MR. SGARLATO: Yes.

3 THE COURT: You didn't do that. You have both of
4 them.

5 MR. SGARLATO: Yes, I do. I ask they be marked
6 in evidence.

7 THE COURT: They are refused in that form and your
8 objecting to that. You have already had your ruling on
9 it and I rule again the same way.

10 MR. SGARLATO: Aside from that, I failed to have
11 marked in evidence, deemed in evidence the pages which
12 Your Honor said should be allowed. I think page 371
13 and 380.

14 MR. SUDLER: The one you offered, counsel.

15 MR. SGARLATO: The ones that the judge said
16 were permissible on the basis of previous referral to
17 side bar.

18 THE CLERK: Yes, I think we marked it.

19 MR. SUDLER: I don't think they were, Your Honor.
20 I think they should be marked as Defendant's Exhibits.

21 MR. SGARLATO: It makes no difference.

22 MR. SUDLER: Since they went in over our
23 objection I would ask they be a defense exhibit.

24 THE COURT: It's included in your "A" versus "B".

25 THE CLERK: Government's Exhibit 3.

1 THE COURT: You didn't mention that in your
2 summation.

3 THE CLERK: I made a mistake. I thought there
4 was a Government's Exhibit. It's not.

5 THE COURT: Put it in anyway.

6 THE CLERK: Extract the transcript marked
7 Defendant's Exhibit C into evidence.

8 MR. SCARLATO: Yes, Your Honor. I also except
9 to the refusal to charge the Jury that the defendant
10 may have reasonable believed in spite of the ostensible
11 grant of immunity that his protection was incomplete
12 and therefore he was justified putting forth the Fifth
13 Amendment.

14 THE COURT: I denied that and deny it again.

15 MR. SGARLATO: That's it.

16 THE COURT: Next.

17 MR. SUDLER: I have no objection, Your Honor.

18 THE COURT: Call the Jury back in.

19 MR. SUDLER: Your Honor, I have all the copies
20 of the transcripts with the deleted portions that I
21 made last night.

22 THE COURT: All right.

23 MR. SUDLER: If they want it right now, we can
24 give it to them.

25 THE COURT: Has the lunch gotten here yet?

* * *

REQUEST TO CHARGE

Knowledge that ones act is wrongful and a purpose to nevertheless do the act, are prerequisites to criminal contempt. Good faith pursuit of a plausible though mistaken alternative is sufficient to negate the intent to commit criminal contempt. And proof beyond a reasonable doubt that the defendant possessed the required intent must be shown to convict of criminal contempt.

See in Re Brown, 454 F.2nd 999 (1971)

If you find that the defendant under the particular circumstances of this case was confused by instructions and remarks of the Court as to the extent of the immunity granted him, that the defendant understood or misunderstood the instructions or remarks of the judge to mean that he was not completely protected from possible later prosecution, you must take such confusion, understanding or misunderstanding into consideration when deciding the question of whether defendant wilfully and knowingly disobeyed the order of the Court directing him to testify.

Hoffman v. U.S. 341 U.S. 479, 486-487 (1951)

Stevens v. Marks, 383 U.S. 234, 246 (1966)

CERTIFICATE OF SERVICE

77-1132
Re: U.S.A. v. Berardelli

STATE OF NEW JERSEY :
: ss.:
COUNTY OF MIDDLESEX :

I, Muriel Mayer, being duly sworn according to law, and being over the age of 21 upon my oath depose and say that: I am retained by the attorney for the above named Appellant.

That on the 25th day of April , 1977, I served the within

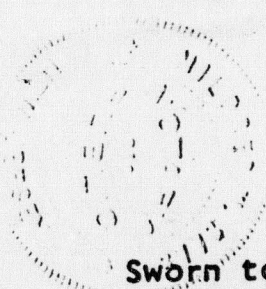
Brief and Appendix

In the matter of U.S.A. v. Arthur Berardelli

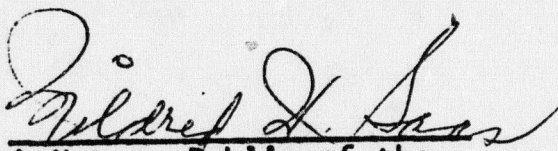
upon Assistant United States Attorney
David Trager, Esq.
United States Courthouse
225 Cadman Plaza
Brooklyn, New York 11201

by depositing two (2) true copies of the/ same securely enclosed

Brief & 1 Copy Appendix, of the
in a post-paid wrapper, in an official depository maintained by the
United States Government.


Muriel Mayer
Muriel Mayer

Sworn to and subscribed
before me this 25th day
of April 1977.


A Notary Public of the
State of New Jersey.

MILDRED W. SAAS
NOTARY PUBLIC OF NEW JERSEY
My Commission Expires February 2, 1978